

28 USC § 1452
remand

Lazar v. Northwest Development Partnership Civ No 94-1024
Adv. No. 94-3164

In re Northwest Development Partnership Case No. 394-3-311-S07

10/18/94

J. Marsh aff'g oral ruling by DDS

The District Court affirmed Judge Sullivan's decision to remand this suit to the state court. The record of the oral ruling by the bankruptcy court established that the reasons for the remand were not clearly erroneous.

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CLERK, U.S. BANKRUPTCY COURT
DISTRICT OF OREGON

OCT 14 1994
2006/19/95

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re
NORTHWEST DEVELOPMENT
PARTNERSHIP,

Debtor.

SEYMOUR LAZAR,

Appellant

v.

NORTHWEST DEVELOPMENT
PARTNERSHIP, et al,

Appellees.

Civil No. 94-1024

Case No. 394-30311-S07

Adversary Proceeding
No. 94-3164

ORDER

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Attorney For Appellees

MARSH, Judge.

1 - ORDER

Certified to be a true and correct
copy of original filed in my office.

Dated: 6/8/95

Donald M. Cinnamond, Clerk

By: David E. Weich, Deputy

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1 Appellant seeks review of the Bankruptcy Court's order to
2 remand this action to the Circuit Court of the State of Oregon for
3 Washington County. For the reasons that follow, the Bankruptcy
4 Court's decision is affirmed.

5 BACKGROUND

6 Appellant originally brought this suit in August of 1993 in
7 the state court as a foreclosure suit against the debtor,
8 Northwest Development Partnership (NDP). Sometime after the
9 foreclosure proceeding was filed, NDP filed for chapter 7
10 bankruptcy, and in March of 1994 appellant removed the proceeding
11 to the Bankruptcy Court pursuant to 28 U.S.C. §1452¹. On April
12 29, 1994, pursuant to §1452(b)², the Bankruptcy Court granted
13 appellee's motion for remand to the state court and appellant
14 filed this appeal. Appellees moved to dismiss the appeal and the
15 United States District Court, Judge Helen Frye, denied the motion.
16 The appeal is now before me.

17 STANDARD

18 A district court may set aside a Bankruptcy Court's findings
19 of fact only if clearly erroneous. Bankruptcy Rule 8013. Under

20 ¹Section 1452(a) governs removal of claims related to
21 bankruptcy cases, and provides that a party may remove any claim
22 or cause of action in a civil action to a federal court for the
district where such civil action is pending, if such court has
jurisdiction of such claim or cause of action under section 1334.

23 ²Section 1452(b) provides in pertinent part, that the court
24 to which such claim or cause of action is removed may remand such
25 claim or cause of action on any equitable ground. A remand order
26 entered under this subsection, or a decision not to remand, is not
reviewable by appeal or otherwise by the court of appeals under
section 158(d), 1291, or 1292 or by the Supreme Court of the
United States under section 1254.

1 this standard, a finding of fact is not clearly erroneous "unless
2 the record leaves a definite and firm conviction that a mistake
3 has been made." LeMaire v. Maass, 12 F.3d 1444, 1450 (9th Cir.
4 1993) (citations omitted).

5 DISCUSSION

6 a. Jurisdiction

7 Appellees do not dispute that the Bankruptcy Court's order of
8 remand is properly appealable to this court. I note that while
9 the question of whether a party can appeal a Bankruptcy Court
10 remand under 28 U.S.C. §1452(b) has not been addressed by the
11 Ninth Circuit, every court to address the issue has found it an
12 appealable order. In re Borelli, 132 B.R. 648 (N.D. Cal. 1991);
13 In re Ramada Inn-Paragould General Partnership, 138 B.R. 63
14 (Bankr. E.D. Ark. 1992); Scherer v. Carol, 150 B.R. 549 (D. Vt.
15 1993). Accordingly, I have jurisdiction to consider this appeal.

16 b. Remand

17 A Bankruptcy Court may remand an action on any equitable
18 ground. 28 U.S.C. §1452(b). Factors which constitute "equitable
19 grounds" in a decision to remand may include judicial economy,
20 prompt and final resolution of disputes, whether the court where
21 the action originated has greater expertise, and comity. Williams
22 v. Shell Oil Co., 169 B.R. 684 (S.D. Cal. 1994); Drexel Burnham
23 Lambert Group, Inc., v. Vigilant Ins. Co., 130 B.R. 405 (S.D.N.Y.
24 1991); In re Marathon Home Loans, 96 B.R. 296 (E.D. Cal. 1989).
25 "Equitable" for §1452(b) purposes has been described simply as
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3 - ORDER

1 "appropriate." Hernandez v. Brakegate, Ltd., 942 F.2d 1223, 1225
2 (7th Cir. 1991) (dictum).

3 Appellant argues that Bankruptcy Judge Donal D. Sullivan
4 failed to consider these factors. Appellant contends that Judge
5 Sullivan merely deferred to the recommendation of the trustee and
6 thus failed to exercise the equitable discretion conferred by the
7 statute. The transcript of the hearing on the motion to remand
8 shows that Judge Sullivan made his decision after careful
9 consideration of all the materials, affidavits, and arguments from
10 both sides. He specifically noted that the state foreclosure
11 proceeding had been pending since August of 1993 and found that
12 the issue of the survivability of appellant's interest in the real
13 property which was at the heart of the bankruptcy action, would be
14 determined in the state court proceeding. Further, Judge Sullivan
15 noted that the timing of appellant's removal from state court to
16 the Bankruptcy Court was suspect because it occurred during a
17 contested discovery proceeding and just before a show cause
18 proceeding to enforce certain orders against appellant. These
19 findings are sufficient to establish that the Bankruptcy Court's
20 decision to remand was based on equitable grounds in accordance
21 with 28 U.S.C. §1452(b).

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4 - ORDER

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2 Accordingly, because the Bankruptcy Court's findings are not
3 clearly erroneous, the Bankruptcy Court order granting remand to
4 state court is affirmed.

5 IT IS SO ORDERED.

6 DATED this 14 day of October, 1994.

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8 Malcolm F. Marsh

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10 Malcolm F. Marsh
11 United States District Judge
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